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LAW OFFICES
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 200
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

ENTERED
Office of Proceedings

APR 22 2010

Part of
Public Record

April 22, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 35141
U S Rail Corporation – Construction and Operation Exemption –
Brookhaven Rail Terminal

And

STB Finance Docket No. 35036
Suffolk & Southern Rail Road LLC-Lease and Operation Exemption-Sills
Road Realty, LLC

Dear Ms. Brown,

Please accept this joint letter petition in behalf of U S Rail Corporation (“U S Rail”) and the Town of Brookhaven (“Brookhaven” or “the Town”) to vacate the Cease and Desist Order imposed by the Board’s October 12, 2007 Decision in the related matter of Suffolk & Southern Rail Road LLC-Lease and Operation Exemption-Sills Road Realty, LLC, STB Finance Docket No. 35036.

The Board’s October 12, 2007 Cease and Desist Order resulted from concerns raised by the Town in an October 2, 2007 letter to the Board stating, in pertinent part:

"The Town of Brookhaven, New York has been in communication with representatives of U.S. Rail Corporation ("U.S. Rail") [*sic*] concerning a proposed rail facility on property that they have leased in Yaphank, Town of Brookhaven, New York. U.S. Rail has alleged that as a common carrier railroad, their construction and operation of this "Rail Yard" is governed by federal law, rules and regulations and subject to the exclusive jurisdiction of the Surface Transportation Board. They, therefore, claim that local laws, rules and regulations have no applicability to this project....Without obtaining the necessary permits under New York State and Town of Brookhaven laws, rules and regulations, representatives of U.S. Rail have commenced clearing and possibly sand mining on the premises. We are particularly disturbed that apparently no environmental review under either NEPA or New York State's SEQRA was undertaken. The Town realizes that if U.S. Rail is acting under the authority of the Surface Transportation Board, than their actions may be justified."

Subsequently, on August 7, 2008, U S Rail filed a petition for Board authority to construct and operate the Brookhaven Rail Terminal. As part of this proceeding the Board's Section of Environmental Analysis ("SEA") has been undertaking a review pursuant to the provisions of NEPA. The SEA has made a preliminary determination that the project will have no significant environmental impacts and that an Environmental Assessment ("EA") will suffice. The parties anticipate the EA process will be completed in the near future.

Concurrently, U S Rail and the Town negotiated a mutually acceptable project site plan. Pursuant to New York State law, the Town made a SEQRA Negative Declaration that, "No significant impact is expected to occur to: land resources, aesthetic resources, groundwater, surface water, archeological resources, open space and recreation, transportation, energy, noise and odor, and public health."¹

The Town Board approved a Stipulation of Settlement resolving all matters in dispute between the parties regarding the Brookhaven Rail Terminal project ("the Project"). By letter to the Board dated March 30, 2010, Brookhaven withdrew all opposition to the Project and indicated its support for expedited

¹ See, Town of Brookhaven Resolution No. 2010-312 approved March 23, 2010, attached to U S Rail's March 30, 2010 letter to the Board (STB Filing ID 226735).

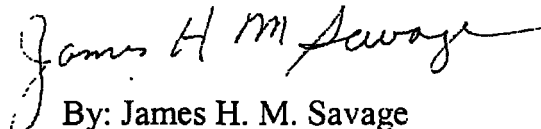
approval of the Project based upon changes made to the Project at the Brookhaven's request and the conditions and requirements set forth in the Stipulation of Settlement.

Pursuant to the Stipulation of Settlement, the Town agrees to permit U S Rail to resume non-rail preconstruction site activities, provided the Board first vacate or otherwise modify the C & D Order. U S Rail understands that by the Board amending the C & D Order, the Board would not be permitting U S Rail to install rail facilities in advance of the Board issuing final approval in this proceeding. A copy of the fully executed Stipulation of Discontinuance being filed in the U.S. District Court for the Eastern District of New York is attached.

Mark Cuthbertson, attorney for the Town of Brookhaven has reviewed this letter and has approved its contents.

We thank the Board for its time and consideration.

Very truly yours,
John D. Heffner, PLLC


By: James H. M. Savage
Of counsel

Attorneys for Petitioner
U S Rail Corporation

Att.

cc: Mark D. Cuthbertson (via electronic mail w/att.)
Robert Ryback (via First Class mail w/att.)
Thomas Stilling (via electronic mail w/att.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,
ADJO CONTRACTING CORP. and
SUFFOLK & SOUTHERN RAIL ROAD LLC,

Plaintiffs,

v.

THE TOWN OF BROOKHAVEN,

Defendant.
-----X

**STIPULATION OF
DISCONTINUANCE**
Index No. 07 CV 4584
(TCP) (ETB)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby is discontinued, with prejudice, without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: 4/10, 2010

FARRELL FRITZ, P.C.

By: Charlotte A. Biblow
Charlotte A. Biblow, Esq.
Aaron E. Zerykier, Esq.
Attorneys for Plaintiffs
1320 RexCorp Plaza
Uniondale, NY 11556-1320
Tel: (516) 227-0700
Fax: (516) 227-0777
cbiblow@farrellfritz.com
azerykier@farrellfritz.com

LAW OFFICES OF MARK
CUTHBERTSON

Mark A. Cuthbertson
Mark A. Cuthbertson, Esq.
Jessica P. Driscoll, Esq.
Attorneys for Defendant
434 New York Avenue
Huntington, NY 11743
Tel: (631) 351-3501
Fax: (631) 614-4314
mcuthbertson@cuthbertsonlaw.com
jdriscoll@cuthbertsonlaw.com